

REMARKS

Remaining Claims

Claims 1-17 remain pending in this application. As explained in more detail below, Applicant submits that all claims are in condition for allowance and respectfully requests such action.

Rejection of Claims 1 - 17 under 35 USC §102 – Jagadeesan et al.

Claims 1 - 17 are rejected under 35 USC §102(e) as being anticipated by Jagadeesan et al. (Pub No. US 20050059400).

Applicant respectfully traverses this rejection.

Applicant asserts that the inventor of the present application conceived and reduced the invention to practice in the United States prior to the effective date of the Jagadeesan et al. reference, which is believed to be September 12, 2003. On January 30, 2006, Applicant filed a 37 C.F.R. § 1.131 declaration with the USPTO, which is hereby incorporated in its entirety by reference, setting forth facts sufficient to show that the present invention was invented in the United States prior to the effective date of the cited reference.

Although it is not specifically clear from the Examiner's office action dated April 17, 2006, why the Applicant's 37 C.F.R. § 1.131 declaration was not successful it appears that the Examiner has rejected the Applicant's declaration for two distinct reasons. First, the Examiner asserts that the evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Jagadeesan reference to either a constructive reduction to practice or an actual reduction to practice. Second, the Examiner asserts that the Applicant has not provided facts showing that the subject matter of the Jagadeesan publication was available to the Applicant before the Jagadeesan reference's filing date. The Applicant disagrees with the Examiner's assertions as explained below.

The Applicant has provided the Examiner with two pieces of information which demonstrate (1) the Applicant's conception of the subject matter present in the Jagadeesan reference at least as early as Jagadeesan's filing date and (2) diligence from conception to the Applicant's reduction to practice. First, the Applicant has provided the Examiner with a sworn affidavit by the Inventor declaring conception of the

Applicant's invention at least as early as the Jagadeesan reference, coupled with diligence from conception until the Applicant's reduction to practice. Second, the Applicant has provided the Examiner with a corroborating copy of the Applicant's internal disclosure record clearly demonstrating that the Applicant was in possession of the subject matter as disclosed in the Jagadeesan reference.

"When reviewing a 37 CFR § 1.131 affidavit or declaration, the examiner must consider all of the evidence presented in its entirety, including the affidavits or declarations and all accompanying exhibits, records and 'notes.' An accompanying exhibit need not support all claimed limitations, provided that any missing limitation is supported by the declaration itself." Quoting *MPEP 715.07—Facts and Documentary Evidence*, citing *Ex parte Ovshinsky*, 10 USPQ2d 1075 (Bd. Pat. App. & Inter. 1989). Additionally "if the dates of the exhibits have been removed or blocked off, the matter of dates can be taken care of in the body of the oath or declaration" and the Inventor "may merely allege that the acts referred to occurred prior to a specified date." Quoting *MPEP 715.07—Facts and Documentary Evidence*.

While the dates have been redacted from the Applicant's invention disclosure record, the Applicant's 37 CFR § 1.131 declaration itself clearly states that the Applicant conceived of the subject matter disclosed in the Jagadeesan reference at a date as early as September 12, 2003 (the filing date of Jagadeesan). MPEP rule 715.07 points out that under such circumstances, the Applicant may allege that the conception took place prior to a specified date. Clearly, the Applicant has met this requirement. However, if the Examiner is still unsatisfied, the Applicant can arrange for the Examiner to view the dates redacted from the Applicant's invention disclosure, although the Applicant does not intend to make these dates a matter of public record.

Furthermore, when reviewing all the evidence in its entirety presented by the Applicant (as required by MPEP rule 715.07), it is believed that a compelling and uncontradicted showing of diligence has been made. The Applicant has stated that the invention was conceived in a corporate environment and coupled with the nature of the subject matter; it took a finite amount of time for the corporation to act on this internally-made invention. Additionally, the Applicant has declared that diligence was exercised from conception until the filing of this application.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that all pending claims are in condition for allowance, and Applicant requests a Notice of Allowance be issued in this case. Should there be any further questions or concerns, the Examiner is urged to telephone the undersigned to expedite prosecution.

Respectfully submitted,
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A handwritten signature in black ink, appearing to read 'Arthur A. Gardner', is written over a horizontal line.

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